

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Supreme Court No. _____
(Leave blank.)

Plaintiff-Appellee,

Court of Appeals No. 243042 *Opn*
(From Court of Appeals decision.)

v

ANTHONY WESTCARR, *OK*
(Print the name you were convicted under on this line.)

Trial Court No. 01-010393
(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

Wayne CIR V. Boykin

INSTRUCTIONS: Answer each question. Add more pages if you need more space. **NOTE:** If you are appealing a Court of Appeals decision involving an administrative agency or a civil action, you will have to replace this page with one containing the relevant information for that case.

126477

PRO PER APPLICATION FOR LEAVE TO APPEAL

*AM
8/3
FP*

1. I was found guilty on (Date of Plea or Verdict) MAY 1 2002

2. I was convicted of (Name of offense) CRIMINAL SEXUAL CONDUCT FIRST DEGREE

3. I had a ☐ guilty plea; ☐ no contest plea; ☒ jury trial; ☐ trial by judge. (Mark one that applies.)

4. I was sentenced by Judge HON ULYSSES W. BOYKIN on MAY 15 2002
(Print or type name of judge) (Print or type date you were sentenced)

in the WAYNE County Circuit Court to 15 years _____ months
(Name of county where you were sentenced) (Put minimum sentence here)

to 30 years _____ months, and to 15 years _____ months to 30 years _____ months.
(Print or type maximum sentence) (Minimum sentence) (Maximum sentence)

I am in prison at the E. C. BROOKS CORRECTIONAL FACILITY in MUSKEGON, Michigan.
(Print or type name of prison) (Print or type city where prison is located.)

5. The Court of Appeals affirmed my conviction on MAY 20 2004
(Print or type date stamped on Court of Appeals decision)

in case number 243042. A copy of that decision is attached.
(Print or type number on Court of Appeals decision)

6. ☒ This application is filed within 56 days of the Court of Appeals decision. (It MUST be received by the Court within 56 days of date on Court of Appeals decision in criminal cases and 42 days in civil cases. Delayed applications are NOT permitted, effective September 1, 2003.)

FILED

JUL - 6 2004

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

ANTHONY WESTCARR, Defendant-Appellant

CA No. 243042

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

GROUND - ISSUES RAISED IN COURT OF APPEALS

7. I want the Court to consider the issues as raised in my Court of Appeals brief and the additional information below.

ISSUE I:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ALLOWED THE PROSECUTION TO AMEND ITS WITNESS LIST SHORTLY AFTER JURY SELECTION BEGAN TO ADD LELAND BABITCH, M.D AND WOULD NOT ADJOURN THE TRIAL

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☒ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☒ 2. The issue raises a legal principle which is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☒ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in "B" apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

DEFENDANT MR. WESTCARR WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE U.S. SIXTH AMENDMENT CONSTITUTION AND MICHIGAN CONST. 1963 ART. I, S 20 AT THE TRIAL AND APPELLATE COURT PROCEEDING WHICH IS HIS FUNDAMENTAL RIGHT PEOPLE V PICKENS, 446 MICH 298 (1994)

PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

ANTHONY WESTCARR, Defendant-Appellant

CA No. 243042

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8, on page 7.

ISSUE II:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☒ 2. The issue raises a legal principle which is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

ANTHONY WESTCARR, Defendant-Appellant

CA No. 243042

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE III:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle which is very important to Michigan law.
- ☐ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

ANTHONY WESTCARR, Defendant-Appellant

CA No. 243042

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE IV:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☒ 2. The issue raises a legal principle which is very important to Michigan law.
- ☒ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

ANTHONY WESTCARR, Defendant-Appellant

CA No. 243042

INSTRUCTIONS: In the part below, only bring up issues that were in your Court of Appeals brief. Attach a copy of your Court of Appeals brief if possible. If you prepared a supplemental brief which was filed in the Court of Appeals, those issues go in this part also. You should attach a copy of that brief, too, if you can. New issues go in question 8 on page 7.

ISSUE V:

A. (Copy the headnote, the title of the issue, from your Court of Appeals brief.)

B. The Court should review the Court of Appeals decision on this issue because: (Check all the ones you think apply to this issue, but you must check at least one.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☐ 2. The issue raises a legal principle which is very important to Michigan law.
- ☐ 3. The Court of Appeals decision is clearly wrong and will cause an important injustice to me.
- ☐ 4. The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

C. (Explain why you think the choices you checked in B apply to this issue. List any cases that you want the Supreme Court to consider. State any facts which you want the Court to consider. If you think the Court of Appeals mixed up any facts about this issue, explain here. If you need more space, you can add more pages.)

FOR MORE ISSUES, ADD PAGES. GIVE THE SAME INFORMATION. NUMBER EACH ISSUE.

PRO PER APPLICATION FOR LEAVE TO APPEAL cont.

WESTCARR ANTHONY, Defendant-Appellant

CA No. 243042

NEW ISSUES - INSTRUCTIONS: If you want the Supreme Court to look at errors which were not raised in the Court of Appeals by your attorney or you, check **YES** in "8." Answer parts **A**, **B**, and **C** for each new issue you raise. There is space provided for 2 new issues. You can add more pages. If you do not have new issues, go to question 9 on page 8.

GROUND - NEW ISSUES

8. ☒ YES, I want the Court to consider the additional grounds for relief contained in the following issues.
The issues were not raised in my Court of Appeals brief. MCR 7.302(F)(4).

NEW ISSUE I:

A. (State the new issue you want the Court to consider.) PAGES ATTACH

- B. The Court should review this issue because: (Check all the ones you think apply to your case, but you must check at least one.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
☒ 2. The issue raises a legal principle which is very important to Michigan law.

- C. (Explain why you think that your choices in B above apply to this issue in your case. List any cases and citations, laws, or court rules, etc. which support your argument. Explain how they apply to this issue. State the facts which support and explain this issue. If these facts were not presented in court, explain why. You can add more pages.)

PRO PER APPLICATION FOR LEAVE TO APPEAL (cont.)

Defendant-Appellant

CA No. 243042

NEW ISSUE II:

A. (State the new issue you want the Court to consider.)

B. The Court should review this issue because: (Check all the ones you think apply to your case, but you must check at least one.)

- ☐ 1. The issue raises a serious question about the legality of a law passed by the legislature.
- ☒ 2. The issue raises a legal principle which is very important to Michigan law.

C. (Explain why you think that your choices in B above apply to this issue in your case. List any cases and citations, laws, or court rules, etc. which support your argument. Explain how they apply to this issue. State the facts which support and explain this issue. If these facts were not presented in court, explain why. You can add more pages.)

RELIEF REQUESTED

9. For the above reasons I request that this Court *GRANT* leave to appeal, *APPOINT* a lawyer to represent me, and *GRANT* any other relief it decides I am entitled to receive.

JULY 1 2004
(Date)

Anthony Westcarr
(Sign your name here.)

WESTCARR ANTHONY 411943 E.C. BROOKS CORRECTIONAL FACILITY
(Print your name and number here.) (Print your address here.)

2500 S. SHERIDAN DRIVE

MUSKEGON HEIGHTS^{MI} 49444

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN
(Print the name of the opposing party, e.g., "People of the State of Michigan.")

Plaintiff-Appellee,

v

ANTHONY WESTCARR
(Print the name you were convicted under on this line.)

Defendant-Appellant.

Supreme Court No. _____
(Leave blank.)

Court of Appeals No. 243042
(From Court of Appeals decision.)

Trial Court No. 01-01393
(See Court of Appeals brief or Presentence Investigation Report.)

MOTION FOR WAIVER OF FEES AND COSTS

Appellant, pursuant to MCR 7.319(7)(h) and MCL 600.2963, for the reasons stated in the attached affidavit of indigency, requests that this Court: (Check the ones that apply to you.)

- ☐ GRANT a waiver pursuant to MCR 7.319(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring prisoners to pay filing fees do not apply to appeals from a decision involving a criminal conviction or appeals from a decision of an administrative agency. The statute applies *exclusively* to prisoners filing civil cases and appeals in civil cases.
- ☒ GRANT a waiver pursuant to MCR 7.319(7)(h) of all fees required for filing the attached pleadings because the provisions of MCL 600.2963, requiring only indigent prisoners to pay court filing fees violates the equal protection provision of the Michigan Constitution, Art I, Sec 2.
- ☐ Temporarily waive the initial partial payment of filing fees for the attached pleadings and order the Michigan Department of Correction to collect and pay the money to this Court at a later date in accordance with MCL 600.2963, when the money becomes available in appellant's prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.
- ☐ Allow an initial partial payment of \$ _____ of the fee for filing the attached pleadings and order the Michigan Department of Correction to collect the remaining money and pay it to this Court at a later date in accordance with MCL 600.2963, as additional money becomes available in my prison account. If the Court does not allow this, I will be prevented from filing the attached pleading in a timely manner.

JULY 1 2004
(Date)

Anthony Westcarr
(Sign your name here.)

ANTHONY WESTCARR 411943
(Print your name and number here.)

E.C. BROOKS CORRECTIONAL FACILITY
(Print your address here.)

2500 S. SHERIDAN DRIVE

MUSKEGON HEIGHTS MI 49444

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN
PLAINTIFF-APPELLEE,

V

ANTHONY WESTCARR,
DEFENDANT-APPELLANT,

SUPREME COURT NO. _____

COURT OF APPEALS NO. 243042

TRIAL COURT NO. 01-010393

PRO PER APPLICATION FOR LEAVE TO APPEAL

I AM IN PRISON AT: E.C. BROOKS CORRECTIONAL FACILITY
2500 S. SHERIDAN DRIVE
MUSKEGON HEIGHTS, MI 49444

THE COURT OF APPEALS AFFIRMED MY CONVICTION: MAY 20, 2004.

THIS APPLICATION IS FILED WITHIN 56 DAYS OF THE COURT OF APPEALS DECISION.

**MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER STATIONERY**

CSJ-110 4/90
4835-3110

TO:

NAME		
NO. AND STREET OR R.R.		
CITY	STATE	ZIP

FROM:

NAME	
NO.	LOCK
INSTITUTION	DATE

IN CORRESPONDENCE, USE NAME AND NUMBER ON YOUR LETTER AND ENVELOPE

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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
PLAINTIFF-APPELLE,

V

ANTHONY WESTCARR,
DEFENDANT-APPELLANT,

SUPREME COURT NO. _____

COURT OF APPEALS NO. 243042

TRIAL COURT NO. 01-010393

MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL BRIEF ON APPEAL

NOW COMES THE DEFENDANT WESTCARR, IN PRO PER, AND REQUEST THAT THIS HONORABLE COURT GRANT HIS MOTION FOR EXTENSION OF TIME TO FILE A SUPPLEMENTAL BRIEF ON APPEAL, IN SUPPORT OF NEW ISSUES RAISED.

1. DEFENDANT WAS CONVICTED AS STATED IN BRIEF ON APPEAL, IN COURT OF APPEALS, STATEMENT OF FACTS, AND SENTENCE AS PUBLISHED.
2. A TIMELY CLAIM OF APPEAL WAS FILED.
3. THE APPELLATE ATTORNEY RETURNED THE DEFENDANT'S TRANSCRIPT TO THE COURT.
4. THE DEFENDANT DOES NOT HAVE HIS TRIAL TRANSCRIPT, TO PROPERLY FILE BRIEF IN PRO PER APPLICATION FOR LEAVE TO APPEAL ON NEW ISSUES.
5. DEFENDANT IS COGNIZANT THAT THIS DOES NOT EXCUSE HIM FROM FILING HIS PRO PER APPLICATION WITH THE COURT WITHIN 56 DAYS OF THE COURT OF APPEALS DECISION, RENDERED MAY 20, 2004.
6. THE DEFENDANT RECEIVED THE APPEALS COURT'S DECISION FROM HIS APPELLATE ATTORNEY JUNE 15, 2004.
7. THEREFORE, THIS BRIEF IN SUPPORT OF THESE (2) NEW ISSUES DOES NOT GIVE REFERENCE TO TRIAL DATES AND PAGES AS REQUIRED. BECAUSE DEFENDANT DOES NOT HAVE HIS TRIAL TRANSCRIPT.

WHEREFORE, DEFENDANT-APPELLANT WESTCARR RESPECTFULLY REQUEST THIS HONORABLE COURT TO GRANT HIM SUFFICIENT TIME AS THE COURT DEEMS PROPER AND FIT FOR EXTENSION IN TIME TO RECEIVE TRIAL TRANSCRIPT AND FILE SUPPLEMENTAL BRIEF ON APPEAL NEW ISSUES.

RESPECTFULLY SUBMITTED,

DATE: JULY 1 2004

BY: Anthony Westcarr
IN PRO PER

**MICHIGAN DEPARTMENT OF CORRECTIONS
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NEW ISSUES

DEFENDANT WESTCARR, DESIRE THE COURT TO CONSIDER TWO(2) ADDITIONAL GROUNDS FOR RELIEF CONTAINED IN THE FOLLOWING ISSUES, WHICH WAS NOT RAISED IN HIS COURT OF APPEALS BRIEF. MCR 7.302(F)(4).

THE COURT SHOULD REVIEW THESE(2) ISSUES BECAUSE, THE ISSUES RAISES A LEGAL PRINCIPLE WHICH IS VERY IMPORTANT TO MICHIGAN LAW.

1: DEFENDANT WESTCARR'S, COUNSEL WAS RENDERED INEFFECTIVE BY STATES INTERFERENCE BY REFUSING COUNSEL ADEQUATE PREPARATION TIME FOR DEFENSE.

DEFENDANT MR. WESTCARR WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE U.S. SIXTH AMENDMENT CONSTITUTION AND MICHIGAN CONST. 1963 ART. 1, § 20 AT THE TRIAL AND APPELLATE COURT PROCEEDING WHICH IS HIS FUNDAMENTAL RIGHT. PEOPLE v PICKENS, 446 MICH 298 (1994). IT IS WELL RECONIZED THAT A CRIMINAL DEFENDANT HAS A RIGHT TO AN EFFECTIVE ASSISTANCE OF COUNSEL. McMANN v RICHARDSON, 397 US 759, 771, n 14; 90 S CT 1441; 25 L Ed 2d 763 (1970). WHICH IS NECESSARY IN ORDER THAT THE ACCUSED MAY RECEIVE A FAIR TRIAL GUARANTEED BY OUR CONSTITUTION. UNITED STATES v CRONIC, 466 US 648, 658; 104 S CT 2039; 80 L Ed 2d 657 (1984). THAT IS TO SAY A MEANINGFUL ASSISTANCE OF COUNSEL AS IT AFFECTS THE RIGHT TO A FAIR TRIAL IN THE ADVERSARIAL PROCESS REPRESENTATION, DURING ANY "CRITICAL STAGE" OF THE PROCEEDINGS. COLEMAN v ALABAMA, 399 US 1, 7; 90 S CT 1999; 26 L Ed 387 (1970). THIS WOULD INCLUDE CASES ON THE CONTINUUM PROCEED OR DUE PROCESS FROM "STRUCTURAL OR PROCEDURAL IMPEDIMENT BY THE STATE OR COURT THAT PREVENT THE ACCUSED FROM RECEIVING THE PANOPLY BENEFITS OF THE CONSTITUTIONAL GUARANTEE. UNITED STATES v DE COSTER, 199 US APP DC 359, 364; 624 F 2d 196 (1976); PEOPLE v MITCHELL, 454 MICH 145 (1997). THEREFORE, IN THE ADVERSARIAL CONTINUUM RANGE WHETHER FROM ACTUAL OR CONSTRUCTIVE DENIAL OF COUNSEL IN INSTANCES

**MICHIGAN DEPARTMENT OF CORRECTIONS
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WHERE THE PERFORMANCE IS SO DEFICIENT THAT THERE HAS BEEN A FUNCTIONAL DENIAL OF COUNSEL IN VIOLATION OF THE STATE AND FEDERAL CONSTITUTION GUARANTEE, THE OUTCOME IS RENDERED UNRELIABLE. BECAUSE THE TRIAL IS CONSTITUTIONALLY STRUCTURALLY DEFECTIVE IT IS UNFAIR. OBVIOUSLY THE ACCUSED DEFENDANT HAS BEEN DENIED HIS STATE AND FEDERAL CONSTITUTIONAL FUNDAMENTAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW. U.S. CONST. AMEND. V; VI; XIV; MICH. CONST. 1963, ART. 1, § 2; § 17; § 20. WHENEVER, THE COURT BY ITS RULING DIRECTLY TRAMMELS THE DEFENSE COUNSEL AND PREVENTS COUNSEL FROM SUBJECTING THE PROSECUTION'S CASE TO A MEANINGFUL ADVERSARIAL TESTING A MISCARRIAGE OF JUSTICE HAS OCCURRED, BECAUSE THERE HAS BEEN, "NO ACTUAL AFFECTIVE ASSISTANCE" 'FOR' THE ACCUSED. CRONIC AT 654, 659. SEE, e.g., GEDER v UNITED STATES, 425 US 80; 96 S CT 1330 47 L Ed 2d 592 (1976); MURRAY v CARRIER, 477 US 478; 106 S CT. 2639; 91 L Ed 2d 39 (1986). THE TRIAL COURT DENIED MR. WESTCARR HIS RIGHT TO COUNSEL AS GUARANTEED BY THE 6TH AMEND. OF THE U.S. CONST., ANY DENIAL OF ACTUAL OR CONSTRUCTIVE COUNSEL CAN NEVER BE SEEN AS A HARMLESS ERROR. BECAUSE THE RIGHT TO EFFECTIVE COUNSEL IS CORE TO OUR SYSTEM. MOREOVER, WHEN DENIED PREJUDICE IS ESTABLISHED IN CONVICTION. SO WHENEVER, THE ACCUSED HAS BEEN DEPRIVED OF DUE PROCESS, EQUAL PROTECTION, AND THE COUNSEL GUARANTEE, AN UNFAIR TRIAL IS THE RESULT AND REVERAL IS REQUIRED. IN ADDITION THE APPELLATE COUNSEL IS FOUND TO BE CONSTITUTIONALLY DEFICIENT BY NOT RAISING THIS CRITICAL ISSUE IN THE DEFENDANT'S FIRST APPEAL OF RIGHT CONSCIENTIOUSLY IN THE DEFENDANT'S BEST INTEREST. PEOPLE v WOLFE, 156 MICH APP 225, 228 (1986); PEOPLE v PAULI, 138 MICH APP 530, 534 (1984); EVITTS v LUCEY, 469 US 387; 105 S. CT. 830; 83 L Ed 2d 821 (1985). IN THE PRESENT CASE, THE DEFENDANT WAS DENIED ADEQUATE REPRESENTATION AT HIS TRIAL IN A PER SE VIOLATION, DUE TO A DENIAL OF FULL

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER STATIONERY

CSJ-110 4/90
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DISCOVERY BY THE PROSECUTOR IN A TIMELY MANNER IN THE CRITICAL STAGE OF PRETRIAL PREPARATION PROCEEDING. THEREBY, DEPRIVED OF THE COUNSEL GUARANTEE BY THE U.S. CONST. AMEND. 6 AND MICH. CONST. 1963, ART. 1, § 20. AFTER THE JURY TRIAL SELECTION THURSDAY APRIL 25, 2002, THE PROSECUTOR PRESENTED AN EXPERT WITNESS DOCTOR AND STATEMENT TO THE DEFENSE FOR THE VERY FIRST TIME. THE DEFENSE OBJECTED TO THE INTRODUCTION OF THE TESTIMONY BY THE WITNESS BECAUSE THE PROSECUTOR ASSURED THE DEFENSE THAT THE PHYSICIAN, STATEMENT HE HAD AND WOULD PRESENT NEEDED NO INDEPENDENT EXAMINOR BECAUSE THERE WAS NO FACTUAL DETRIMENTAL MATERIAL EVIDENCE TO REBUT. THE PROSECUTOR ON RECORD ADMITTED HE DID INDEED SAY THERE WAS NO NEED FOR EXPERT REBUTTAL TESTIMONY FOR STATED REASON TO THE DEFENSE. THE COURT ALLOWED PROSECUTOR'S EXPERT TESTIMONY INTO RECORD. THE DEFENDANT'S ATTORNEY ADVISED THE COURT HE COULD NOT REPRESENT HIS CLIENT EFFECTIVELY AND THEREFORE WOULD LIKE TO WITHDRAW AS DEFENSE ATTORNEY DUE TO A LACK OF ADEQUATE PREPARATION BY REASON OF DENIAL OF FULL DISCOVERY FROM PROSECUTOR. STATING THE DEFENSE'S NEEDED ADEQUATE TIME TO PREPARE A MEANINGFUL DEFENSE IN THE FORM OF AN EXPERT REBUTTAL WITNESS TO PROSECUTOR'S EXPERT TESTIMONY. IN LIGHT OF THE SURPRISED SECOND EXPERT OPINION, IN VIOLATION OF STATE AND FEDERAL DUE PROCESS PROTOCOL OF FULL DISCLOSURE DISCOVERY, OF RELEVANT DATA TO INSURE FAIRNESS AND ADEQUATE OPPORTUNITY TO PREPARE A PROPER DEFENSE. IN RE BAY PROSECUTOR, 109 MICH 476, 486 (1981), lv den, 413 MICH 852 (1982). THE JUDGE REPLIED HE DOES NOT PERMIT COUNSEL DISCHARGE AT THIS JUNCTURE IN TRIAL PROCEEDINGS. THE COURT'S STATED REASON FOR DOING SO WAS HE DID NOT WANT TO BE IN VIOLATION OF THE 180 DAY SPEEDY TRIAL RULE. HOWBEIT THE DEFENDANT WAS NOT INCARCERATED. IN ADDITION THE DEFENSE WAS UNABLE TO ACQUIRE PALATABLE EXPERTISE OVER THE WEEK END FOR THE DEFENDANT. SUBSEQUENTLY THE DEFENSE WAS NOMINAL. THE DEFENDANT WAS CONSTRUCTIVELY DEFENSELESS ENTERING THE TRIAL ARENA UNPREPARED AN IN-

**MICHIGAN DEPARTMENT OF CORRECTIONS
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IN CORRESPONDENCE, USE NAME AND NUMBER ON YOUR LETTER AND ENVELOPE

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EFFECTIVE . BY THE COMBINATION OF THE PROSECUTOR'S WILLFUL OR INADVERTENT NEGLIGENT FAILURE TO COMPLY IN A TIMELY MANNER WITH THE CONSTITUTIONAL LAW, OF FULL DISCLOSURE OF THE DISCOVERY ORDER, ENTERED UPON THE REQUEST OF THE DEFENDANT, EXACERBATED BY THE COURT'S REFUSAL TO TAKE PROPER REMEDIAL STEPS TO RECTIFY THE PROBLEM CREATED BY THE PROSECUTOR'S FAILURE TO COMPLY WITH DISCOVERY FULL DISCLOSURE . BY PROHIBITING THE INTRODUCTION OF EVIDENCE NOT DISCLOSED OR GRANTING THE REQUESTED CONTINUANCE OR ANY OTHER SUCH JUST REMEDY TO MAINTAIN A RELIABLE ADVERSARY PROCEEDING. MOREOVER, THE COURT'S UNUSUAL AND UNREASONABLE APPLICATION OF THE SPEEDY TRIAL MCR 6.004 180 DAY RULE IS BAFFLING IN LIGHT OF THE FACT THAT THE DEFENDANT WAS NOT INCARCERATED, AS A REASON FOR NOT KEEPING THE ADVERSARY TESTING PROCESS ALIVE . CONSIDERING THE DEFENDANT IS THE PARTY REQUESTING MORE TIME BY VIRTUE OF THE FACT THE PROSECUTOR WAS CULPRIT OF NONCOMPLIANCE TO DUE PROCESS OF MATERIAL EVIDENCE IN FULL DISCOVERY DISCLOSURE. THE COURT MAY NOT EXALT EXPEDIENCE OVER THE DEFENDANT'S CONSTITUTIONAL RIGHT TO AN EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS, AND EQUAL PROTECTION UNDER THE LAW. DOING SO NEGATES A FAIR TRIAL CONTRARY TO OUR JUSTICE SYSTEM AND DEMANDS REVERSAL . PEOPLE V JACKSON, NO. 116335 (MICH CT. APP, 10-23-90); POWELL v ALABAMA, 287 US 45; 53 S CT 55; 77 L Ed 158 (1932); UNITED STATES v CRONIC ; PEOPLE v BATTLES #2, 109 MICH APP 754 (1981) PEOPLE v BRUINSMA, 34 MICH APP 167 (1977). CLEARLY THE FACTS OF THIS CASE LUCIDLY SHOW THE COURT'S ADJUDICATION RESULTED IN A DECISION CONTRARY TO, CLEAR ESTABLISHED STATE AND FEDERAL LAWS, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES IN RULES OF EVIDENCE, DISCOVERY, AND SPEEDY TRIAL . HARPSTER v STATE OF OHIO, 128 F. 3d 322, 326 (6 TH CIR. 1997); cert den ___ US ___, 118 S. CT. 1044, 140 L. Ed. 2d 109 (1998); MITCHELL v MASON, 60 F. SUPP. 2d 655 (E. D. MICH. 1999). SIMPLY SAID, THE "FACTS OF THIS CASE JUSTIFY A PRESUMPTION OF INEFFECTIVENESS WITHOUT INQUIRY INTO ACTUAL PERFORMANCE OR PREJUDICE ." CRONIC,

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER STATIONERY

CSJ-110 4/90
4835-3110

TO:

NAME		
NO. AND STREET OR R.R.		
CITY	STATE	ZIP

FROM:

NAME	
NO.	LOCK
INSTITUTION	DATE

IN CORRESPONDENCE, USE NAME AND NUMBER ON YOUR LETTER AND ENVELOPE

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at 178, 560 N.W. 2d 600. PEOPLE v STORCH, 176 MICH APP 414 (1989); HERRING v NEW YORK, 422 US 853; 95 S CT 2550; 45 L Ed 2d 593 (1975); FERGUSON v GEORGIA, 365 US 570; 81 S CT 756; 5 L Ed 2d 783 (1961). CONSEQUENTLY THE COMBINED RESULT OF THE PROSECUTOR'S NONCOMPLIANCE TO THE FULL DISCLOSURE DISCOVERY LAW AND THE COURT'S RULING, MR. WESTCARR WAS DENIED HIS STATE AND FEDERAL, CONSTITUTIONAL, FUNDAMENTAL RIGHT TO DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW, AND IN THE PROCESS DEPRIVED OF HIS GUARANTEE RIGHT TO AN EFFECTIVE ASSISTANCE OF COUNSEL, IN A CRIMINAL PROSECUTIONS PROCEEDING, IN VIOLATION OF MICHIGAN STATE AND THE UNITED STATES CONSTITUTION CHAPMAN v STATE OF CALIFORNIA, 386 U.S. 18, 23, 87 S. CT. 824, 826, 17 L. Ed. 2d 705 (1967); HOLLOWAY v ARKANSAS, 435 U.S. 475, 489, 98 S. CT. 1173, 55 L. Ed. 2d 426 (1978). U.S. CONST. AMEND. V; VI; XIV; AND MICH. CONST. 1963, ART. 1, § 2; § 17; § 20.

UNDER THESE CIRCUMSTANCES REVERSAL IS MANDATORY, DUE TO THE MANIFEST miscarriage OF JUSTICE BY AN UNFAIR TRIAL, INVOLVING CRITICAL ERRORS OF CONSTITUTIONAL VIOLATION.

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER STATIONERY

CSJ-110 4/90
4835-3110

TO:

NAME		
NO. AND STREET OR R.R.		
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IN CORRESPONDENCE, USE NAME AND NUMBER ON YOUR LETTER AND ENVELOPE

11. DEFENDANT WESTCARR WAS DENIED HIS RIGHT TO FULL DISCLOSURE DISCOVERY BY THE PROSECUTOR IN A TIMELY MANNER, IN VIOLATION OF CONSTITUTIONAL LAW. THEREBY, DEPRIVED OF HIS RIGHT TO DUE PROCESS, AND EQUAL PROTECTION UNDER THE STATE AND FEDERAL CONSTITUTIONAL LAW.

THE PROSECUTION HAS A DUTY TO COMPLY WITH ANY DISCOVERY ORDER ENTERED UPON REQUEST BY THE DEFENDANT. A DEFENDANT IS ENTITLED TO FULL DISCLOSURE AND ACCESS TO ALL RELEVANT INFORMATION IN ORDER TO INSURE FAIRNESS AND AN ADEQUATE OPPORTUNITY TO PREPARE A DEFENSE. IN RE BAY PROSECUTOR, 109 MICH 476, 486 (1981), lv den, 413 MICH 852 (1982); PEOPLE v WALTON, 71 MICH APP 478, 484 (1976). VIOLATION OF THE DISCOVERY ORDER UNDER THESE CIRCUMSTANCES WOULD REQUIRE A CONVICTION TO BE OVERRULED ON APPEAL. PEOPLE v PACE, 102 MICH APP 522 (1980). MOREOVER, THE PROSECUTION HAS A CONTINUING OBLIGATION TO DISCLOSE ANY ADDITIONAL WITNESS WHICH SHOULD HAVE BEEN INCLUDED IN THE DATA FURNISHED UNDER THE DISCOVERY ORDER REQUESTED. ADDITIONALLY, IT IS AN ESTABLISHED CONSTITUTIONAL LAW, THE PROSECUTION IS OBLIGED TO DISCLOSE ALL EVIDENCE IN ITS POSSESSION FAVORABLE TO THE DEFENDANT AND THAT WHICH IS MATERIAL TO EITHER GUILT OR PUNISHMENT.

BRADY v MARYLAND, 373 US 83, 83 S. CT. 1194, 10 L Ed 2d 215 (1963): "IT HAS LONG BEEN THE LAW IN THIS STATE THAT A DEFENDANT IS ENTITLED TO HAVE PRODUCED AT TRIAL ALL THE EVIDENCE BEARING ON HIS GUILT OR INNOCENCE WHICH IS WITHIN THE CONTROL OF THE PROSECUTOR... PEOPLE v DELLABONDA, 265 MICH 486 (1933); PEOPLE v DAVIS, 52 MICH 569 (1984)." PEOPLE v FLORINCH, 84 MICH APP 128, 133 (1978), lv den, 405 MICH 828 (1978).

SIMPLY STATED, THE STATE MAY NOT PLACE EVIDENCE MATERIAL TO DEFENSE OUTSIDE THE REACH OF THE DEFENDANT, THE STATES GOOD FAITH EFFORTS, BAD FAITH, OR MERE NEGLIGENCE IS IRRELEVANT. ARIZONA v YOUNGBLOOD, 488 US 51, 109 S CT 333, 102 L Ed 281 (1988); HILLARD v SPAULDING, 719 F 2d 1443, 1445-1446 (9TH CIR 1983).

MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER STATIONERY

CSJ-110 4/90
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TO:

NAME		
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INSTITUTION	DATE

IN CORRESPONDENCE, USE NAME AND NUMBER ON YOUR LETTER AND ENVELOPE

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FOR ALL THESE STATED REASONS REVERSAL AND REMAND SHOULD BE GRANTED TO DEFENDANT MR. WESTCARR, BY THIS HONORABLE COURT, OR IN THE ALTERNATIVE THE DEFENDANT REQUEST THIS COURT TO GRANT LEAVE TO APPEAL, APPOINT A LAWYER TO REPRESENT HIM AND GRANT ANY OTHER RELIEF IT DECIDES THE DEFENDANT WESTCARR IS ENTITLED TO.

**MICHIGAN DEPARTMENT OF CORRECTIONS
PRISONER STATIONERY**

CSJ-110 4/90
4835-3110

TO:

NAME		
NO. AND STREET OR R.R.		
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STATE OF MICHIGAN
COURT OF APPEALS

DEFENDANT'S COPY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY WESTCARR,

Defendant-Appellant.

UNPUBLISHED

May 20, 2004

No. 243042

Wayne Circuit Court

LC No. 01-010393

Before: Saad, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of three counts¹ of first-degree criminal sexual conduct (CSC I), MCL 750.520b (victim under thirteen), and from his subsequent sentencing to three concurrent terms of fifteen to thirty years' imprisonment. We affirm.

Defendant first contends that the trial court erred by permitting the prosecutor to endorse a medical witness on the first day of trial and by denying his request for an adjournment. This Court reviews the trial court's decision to permit late endorsement of a witness and the decision to deny a request for an adjournment for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 32-33; 592 NW2d 75 (1998), *People v Echavarria*, 233 Mich App 356, 368; 592 NW2d 737 (1999). "An abuse of discretion is found when the trial court's decision is so grossly contrary to fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, or when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling." *People v Callon*, 256 Mich App 312, 326; 662 NW2d 501 (2003), citing *Gadomski*, *supra* at 32-33.

MCL 767.40a(4) provides that: "The prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties." The statutory requirements were satisfied because

¹ Defendant was originally charged with, and went to trial on, four counts of first-degree CSC, but Count IV, a charge of fellatio, was dismissed at trial because the victim indicated that the second episode involving oral sex occurred in Florida.

the prosecutor established good cause for his failure to list Dr. Babitch: he was unaware of his existence or proposed testimony until he was provided with the report of the follow-up examination by the victim's mother, and that did not happen until the first day of the trial in the middle of the jury selection.

Moreover, to establish an abuse of discretion, defendant would have to show that he was unfairly prejudiced. *Callon, supra* at 328. Defendant has not established prejudice because he has failed to demonstrate that he was unable to procure his own medical expert before the end of the trial or that an independent medical examination would have produced evidence favorable to the defense. Additionally, the existing situation—where the first doctor who examined the victim after the alleged assault concluded that her hymen was probably intact and the second doctor who performed a follow-up examination several days later concluded that it was not—presented an ambiguity in the evidence that benefited defendant.

Likewise, defendant has failed to show an abuse of the trial court's discretion in denying defendant's request for a continuance. Defendant made his request on the first day of trial, a Thursday, during jury selection. The trial court noted that defense counsel had indicated that he had, at least at one time, anticipated calling a doctor, and defense counsel agreed that he had had one in mind. The trial court observed that after the jury was selected, the trial would not begin until the following Monday so that if defendant concluded he needed a counter-expert, "you need to get one." Defendant therefore had Friday, the weekend, and the first two days of trial to talk with the expert "he had in mind" and determine whether it would avail the defense anything to present the doctor's testimony. Defendant also could have used this time to interview Dr. Babitch and determine if presentation of his own expert would be appropriate.

Moreover, the trial court did not preclude defendant from requesting a continuance if it became clear that he had secured the testimony of his own doctor but that the doctor was not immediately available to testify. Instead, it appears that the defense concluded that it would not pursue its own medical witness. This strategic decision makes sense because there was an ambiguity between the testimony of the initial examining physician and the doctor who did the follow-up examination. This ambiguity gave defendant a basis on which to argue that someone had physically molested the complainant *after* the initial examination, or that someone had manipulated the complainant to make it appear she had been molested. Accordingly, defendant has failed to establish an abuse of the trial court's discretion.

Defendant next contends that he was deprived of his right to the effective assistance of counsel where his trial counsel failed to object to the improper MRE 404(b) testimony of his wife, who claimed that defendant had physically abused her during her marriage. Defendant admits that he did not move for an evidentiary hearing or for a new trial claiming ineffective assistance of counsel. Review of an unreserved claim of ineffective assistance of counsel is precluded unless there is sufficient detail in the existing record to support the claim. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). This Court will find ineffective assistance only if the defendant demonstrates that his counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by his counsel's defective performance to the extent that he was deprived of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

Defendant's trial strategy, as he announced in his opening statement, was to claim that his wife had induced the victim, her daughter, to make these false allegations of sexual molestation because of her own animosity toward defendant. Although she did mention briefly that defendant had physically abused her, it was defense counsel who delved into these allegations at length as a prelude to alleging that defendant's wife had tried to "get back" at defendant. We do not second-guess trial counsel on matters pertaining to trial strategy. *Pickens, supra* at 330.

Defendant next contends that the trial court abused its discretion when it permitted the prosecutor to present the victim's father as a rebuttal witness in violation of the sequestration order. Defendant also claims that the testimony constituted improper rebuttal on a collateral issue. Defendant objected to this testimony because the witness had been present in the courtroom during the testimony and argued that allowing him to testify would violate the sequestration order. However, defendant did not object that the testimony would constitute improper rebuttal on a collateral matter. We review the preserved issue regarding the violation of the sequestration order for an abuse of discretion. *People v Solak*, 146 Mich App 659, 669; 382 NW2d 495 (1985). "A defendant who complains on appeal that a witness violated the lower court's sequestration order must demonstrate that prejudice has resulted." *Solak, supra* at 669. Regarding defendant's rebuttal/collateral evidence claim, that unpreserved issue is reviewed for plain, outcome-determinative error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Regarding the preserved issue, the trial court explained that it allowed the witness to testify because the prosecutor indicated he excused the witness from the courtroom as soon as it became apparent that he would be a rebuttal witness. Defendant did not dispute the prosecutor's statement. Additionally, defendant's father was not an eyewitness to any of the molestation incidents. His testimony was presented solely to cast doubt on defendant's insistence that he was never alone with the children. Thus, the trial court's decision was based on a logical reason, not on "a perversity of will, a defiance of judgment, or the exercise of passion or bias, or when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling." *Callon, supra* at 326.

Regarding the unpreserved issue concerning the introduction of improper rebuttal evidence on a collateral matter, our Supreme Court stated in *People v Figures*, 451 Mich 390, 399; 547 NW2d 673 (1996), that "[r]ebuttal evidence is admissible to 'contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same,' " quoting *People v DeLano*, 318 Mich 557, 570; 28 NW2d 909 (1947), quoting *People v Utter*, 217 Mich 74, 83; 185 NW 830 (1921). The testimony was proper rebuttal because it contradicted defendant's own testimony that he was never alone with the children. This was not collateral evidence because it was "narrowly focused on refuting defendant's denial" that he would have had an opportunity to molest the complainant. *People v Vasher*, 449 Mich 494, 504; 537 NW2d 168 (1995). The trial court did not abuse its discretion by permitting the prosecutor to present Norman's testimony in rebuttal. Therefore, defendant has failed to demonstrate plain error affecting his substantial rights.

Defendant finally contends that the trial court erred in scoring OV 13, MCL 777.43, for fifty points because it was precluded from doing so by MCL 777.41(2)(c). Contrary to defendant's assertion on appeal, defendant did not object to the trial court's rescoring of OV 13.

Challenges to the scoring of the sentencing guidelines may not be raised on appeal “unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.” MCL 769.34(10); see also MCR 6.529(C); *People v Harmon*, 248 Mich App 522, 530; 640 NW2d 314 (2001).² This Court applies plain error review to an unpreserved sentencing issue. *People v McDaniel*, 256 Mich App 165, 171; 662 NW2d 101 (2003), lv held in abeyance *People v McDaniel*, unpublished order of the Supreme Court, issued September 11, 2003 (Docket No. 123437), citing *Carines*, *supra* at 764-766. “To avoid forfeiture under the plain error rule, defendant must establish that: (1) error occurred, (2) the error was clear and obvious, and (3) the plain error affected his substantial rights, in that the error affected the outcome of the lower-court proceedings.” *McDaniel*, *supra* at 171, citing *Carines*, *supra* at 765.

According to the sentencing information report (SIR), the court scored the first of the three offenses,³ the information lists this as a count of first-degree CSC based on vaginal penetration. That count was “the sentencing offense” as used in OV 11. MCL 777.41. If multiple penetrations occur during the course of “the sentencing offense,” then defendant would be assessed points under OV 11 based on those multiple penetrations. Support for this interpretation is derived from the plain language of the statute: the court is required to score “all sexual penetrations . . . arising out of the sentencing offense,” MCL 777.41(2)(a), but “[m]ultiple sexual penetrations . . . extending beyond the sentencing offense may be scored in offense variables 12 or 13.” MCL 777.41(2)(b).

In *People v McLaughlin*, 258 Mich App 635, 671-678; 672 NW2d 860 (2003), this Court upheld the trial court’s scoring of OV 11 for fifty points in a case involving multiple separate sexual penetrations within one criminal episode because it interpreted the language of MCL 777.41 to preclude scoring for the one penetration that formed the basis of an individual first-degree CSC conviction but to allow scoring for other independent penetrations occurring in the criminal incident—even if they formed the basis for other first-degree CSC convictions. Therefore, in a case such as this where there are other penetrations independent of the sentencing offense (a separate penetration occurring during the same criminal incident as the scoring offense, another incident in Detroit, and one in Florida), the scoring for those multiple, separate

² Our Supreme Court has granted leave to appeal in *People v Kimble*, 252 Mich App 269; 651 NW2d 798 (2002), lv gtd 468 Mich 870 (2003). The Court has directed the parties to brief “(1) whether the preservation requirement of MCL 769.34(10) applies to the claim relating to Offense Variable 16; (2) if applicable, would the statute preclude an appellate court from considering the claim of error even under a plain error standard; and (3) if so, whether such a provision is within the power of the Legislature.” 468 Mich at 870. Until the Court resolves this preservation issue, however, we are bound by our previous decision in *People v Harmon*, 248 Mich App 522, 530; 640 NW2d 314 (2001).

³ Although MCL 777.21(2) appears to require the trial court to score each offense, this Court has held that, at least “where the crimes involved constitute one continuum of conduct,” § 21(2) does not preclude the court from considering “the entirety of defendant’s conduct in calculating the sentencing guidelines range with respect to each offense.” *People v Cook*, 254 Mich App 635, 641; 658 NW2d 184 (2003).

penetrations is accomplished under OV 13. Defendant has failed to demonstrate plain, outcome-determinative error because the trial court's scoring of OV 13 is supported both by a plain-language interpretation of MCL 777.41 and MCL 777.43 and by the evidence.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Karen M. Fort Hood



IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN
(Print the name of the opposing party, e.g. "People of the State of Michigan.")

Supreme Court No. _____
(Leave blank.)

Plaintiff-Appellee,

Court of Appeals No. 243042
(From Court of Appeals decision.)

v

ANTHONY WESTCARR
(Print the name you were convicted under on this line.)

Trial Court No. 01-010393
(See Court of Appeals brief or Presentence Investigation Report.)

Defendant-Appellant.

AFFIDAVIT OF INDIGENCY

1. My name is WESTCARR. I am in prison at E.C. BROOKS in MUSKEGON MI.
(Type or print your name here.) (Name of prison) (city where prison is located)

My prison number is 411943. My income and assets are: (Check the ones that apply to you.)
(Your prison number.)

- ☐ My only source of income is from my prison job and I make \$_____ per day.
☒ I have no income.
☒ I have no assets that can be converted to cash.
☒ I can not pay the filing fees for the attached application.

I ask this Court to waive the filing fee in this matter.

I declare that the statements above are true to the best of my knowledge, information and belief.

JULY 1 2004
(Date)

Anthony Westcarr
(Sign your name here.)

ANTHONY WESTCARR
(Print your name here.)

PROOF OF SERVICE

On JULY, 200 4, I mailed by U.S. mail one copy of the documents checked below: (Put a check mark by the ones you mailed.)

- ☒ Affidavit of Indigency and Proof of Service
☒ Motion to Waive Fees and Costs
☐ Statement of Prisoner Account (this is not necessary in criminal appeals)
☒ Pro Per Application for Leave to Appeal with a copy of Court of Appeals Decision
☒ Court of Appeals Brief
☒ Supplemental Court of Appeals Brief

TO: WAYNE County Prosecutor, 1441 ST ANTOINE, at
(Name of county where you were sentenced) (Address)
DETROIT, MI 48226
(City) (Zip Code)

I declare that the statements above are true to the best of my knowledge, information and belief.

JULY 1 2004
(Date)

Anthony Westcarr
(Sign your name here.)

ANTHONY WESTCARR
(Print your name here.)

REQUEST FOR STATEMENT OF ACCOUNT

TO: PRISONER ACCOUNTING

I request a statement of my prisoner account for filing in the Court in the case captioned as follows:

IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

(Type or print your name here.)

Appellant

v

(Type or print the name of the party you are challenging)

Appellee

Your prompt assistance in this matter will be greatly appreciated.

Sincerely,

(Sign here)

(Your name)

(Your prison number)

(Block or Unit lock)

cc: File

NOTE: IF YOU ARE APPEALING YOUR CRIMINAL CONVICTION, YOU DO NOT NEED TO FILL-OUT THIS FORM, HOWEVER, YOU MUST COMPLETE THE AFFIDAVIT OF INDIGENCY AND THE MOTION TO WAIVE FEES.

IF YOU ARE APPEALING A CIVIL JUDGMENT, COMPLETE THIS FORM BY FILLING IN THE INFORMATION REQUIRED ON EACH LINE. AFTER THE FORM IS COMPLETED, SEND IT TO THE PRISONERS' ACCOUNTING OFFICE AT YOUR FACILITY. BE SURE TO RETAIN A COPY OF THIS FORM FOR YOUR FILE (YOU MUST ALSO COMPLETE THE AFFIDAVIT OF INDIGENCY AND THE MOTION TO WAIVE FEES).

MICHIGAN SUPREME COURT
CLERK
CORBIN R. DAVIS

JUL - 6 2004

FILED

BROOKS CORRECTIONAL FACILITY
2500 S. Sheridan Drive
Muskegon Heights, Michigan
49444

THE MICHIGAN SUPREME COURT
LANSING, MICHIGAN

RE: People v Anthony Westcarr,
Supreme Court No. 126477

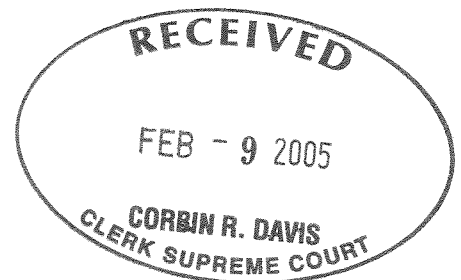
Enclosed, please find the following: Certificate Of Prisoner Account Activity, Trust Account Statement for the period of 2/1/2004 to 2/1/2005, Supreme Court Order. For the purpose of filing the same.

Thank you in advance for your time and cooperation in this matter.

Signed By,

Anthony Westcarr
Anthony Westcarr
Inmate No. 411943
Brooks Corr. Fac.
2500 S. Sheridan Drive
Muskegon Hts, MI 49444

DATED: 2/7/2005



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